

ESTTA Tracking number: **ESTTA1138550**

Filing date: **06/07/2021**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                        |   |
|------------------------|---|
| Proceeding             | 88712080  |
| Applicant              | Danica Patrick Brands, LLC  |
| Applied for Mark       | DANICA  |
| Correspondence Address | BRADLEY J WALZ<br>BARNES & THORNBURG LLP<br>225 SOUTH SIXTH STREET<br>SUITE 2800<br>MINNEAPOLIS, MN 55402<br>UNITED STATES<br>Primary Email: trademarks-mi@btlaw.com<br>Secondary Email(s): bwalz@btlaw.com<br>612-367-8756 |
| Submission             | Applicant's brief   |
| Attachments            | Applicants Appeal Brief.pdf(328318 bytes )  |
| Appealed class         | Class 033. First Use: 0 First Use In Commerce: 0<br>All goods and services in the class are appealed, namely: Wine  |
| Filer's Name           | Bradley J. Walz   |
| Filer's email          | trademarks-mi@btlaw.com, bwalz@btlaw.com  |
| Signature              | /Bradley J. Walz/   |
| Date                   | 06/07/2021  |

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD

---

In re Application of: Danica Patrick Brands, LLC  
Application No.: 88/712,080  
Filed: December 2, 2019  
Mark: DANICA

---

APPLICANT’S APPEAL BRIEF

---

**INTRODUCTION**

The Examining Attorney erred in maintaining the refusal to register Applicant's DANICA mark on the ground that it is likely to cause confusion with the mark DANIKA RANCH for “alcoholic beverages, except beer” (the “Cited Mark”). The circumstances of the *Hutchinson and Stengl* and *Champagne Louis Roederer* cases are very similar, if not identical, to those in this case. In these cases, the addition of the word CREEK transformed the meaning of the marks such that consumers would primarily think of a place; namely, a creek. The same transformation occurs in this case because there is legal significance to the RANCH term when it is used in connection with wine, a good covered by the broad description in the Cited Mark and the only good offered by Stag’s Leap Wine Cellars (“Stag’s Leap”), the owner of the Cited Mark, in its 125 year history.

The Alcohol and Tobacco Tax and Trade Bureau requires that in order to use the term RANCH on a wine label 95% of the wine must have been produced from primary winemaking material grown on the named ranch. 27 C.F.R. § 4.39(m). Danika Ranch is the name of a physical ranch in Napa Valley, CA. Therefore, adding the term RANCH to DANIKA has legal significance

and conveys to consumers that Stag's Leap's chardonnay wine is produced using 95% of the wine making material from the Danika Ranch in Napa Valley, CA.

The impression of a physical ranch is the primary impression made on the relevant consumer and the Examining Attorney offered no persuasive evidence to demonstrate consumers are likely to perceive any other meaning. The only impression made on the relevant consumer of Applicant's wine is that DANICA is a personal name. The DANIKA RANCH mark and Applicant's DANICA mark are materially different in sight, sound, and especially meaning, and the co-existence of these two marks is unlikely to cause confusion. Therefore, Applicant respectfully requests that the Trademark Trial and Appeal Board (the "Board") reverse the Trademark Office's refusal to register Applicant's mark.

### **STATEMENT OF THE ISSUES**

1. The first issue on appeal is whether the presence of RANCH in the Cited Mark causes it to be dissimilar from Applicant's mark in meaning and overall commercial impression.

**Answer: Yes**

2. The second issue on appeal is whether Applicant's normal channels of trade and the normal channels of trade for the Cited Mark are sufficiently different because it is impossible for the Cited Mark to be used on a style of wine other than a chardonnay wine.

**Answer: Yes**

### **ARGUMENT**

It is the Examining Attorney's initial burden to put forth sufficient evidence that the mark for which registration is sought meets the criteria for unregistrability. *In re Budge Mfg. Co.*, 8 U.S.P.Q.2d 1259 (Fed. Cir. 1988) (emphasis added); *see also* TMEP § 710.01. "All evidence that the examining attorney relies on in making a requirement or refusal must be placed in the record and copies must be sent to the applicant." TMEP § 710.01. "In every case turning on likelihood of confusion, it is the duty of the examiner . . . to find, upon consideration of *all* the evidence, whether

or not confusion appears likely.” *In re Guild Mortgage Company*, 912 F.3d 1376, 1379 (Fed. Cir. 2019) (quoting *In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1362 (emphasis in original). “In discharging this duty, the thirteen *DuPont* factors ‘must be considered’ ‘when [they] are of record.’” *In re Dixie Rests., Inc.*, 105 F.3d 1405, 1406 (Fed. Cir. 1997) (quoting *DuPont*, 476 F.2d at 1361). This includes the thirteenth factor that considers “any other established fact probative of the effect of use.” *In re Hana Financial Group Inc.*, Serial No. 86019890 (T.T.A.B. June 2, 2021). Substantial evidence must support the factual findings of the likelihood of confusion factors. *In re Viterra, Inc.*, 101 U.S.P.Q.2d 1905 (Fed. Cir. 2012); *see also In re Synthon Holding B.V.*, 2019 WL 1092591, \*4 (T.T.A.B. Feb. 14, 2019).

**I. Applicant’s DANICA mark and the Cited Mark create different overall commercial impressions**

It is well settled that marks are compared in their entireties for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners v. Lion Capital*, 110 U.S.P.Q.2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 U.S.P.Q.2d 1689, 1691 (Fed. Cir. 2005)). Consumers do not dissect trademarks into discrete points of similarity and dissimilarity; rather they will focus on the overall commercial impression created by the marks. *Paramount Int’l Export, Ltd. v. Q’SAIL Co. Ltd.*, 2017 WL 4155295, \*7 (T.T.A.B. Sept. 15, 2017) (citations omitted). “[S]imilarity is not a binary factor but is a matter of degree.” *In re Coors Brewing Co.*, 68 U.S.P.Q.2d 1059 (Fed. Cir. 2003). Consequently, the concurrent use of a similar element, even if dominant, does not compel a finding that confusion is likely. *Id.*; *see also Kellogg Co. v. Pack’em Enters., Inc.*, 21 U.S.P.Q.2d 1142 (Fed. Cir. 1991) (finding FROOTEE ICE for flavored ice bars unlikely to cause confusion with FROOT LOOPS for breakfast cereal and related goods); *Keebler Co. v. Murray Bakery Prods., Inc.*, 9 U.S.P.Q.2d 1736 (Fed. Cir. 1989) (finding PECAN SHORTIES unlikely to cause

confusion with PECAN SANDIES). It is well settled that disclaimed material still forms a part of the mark and cannot be ignored in determining a likelihood of confusion. *Viterra Inc.*, 101 U.S.P.Q.2d at 1905 (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 218 U.S.P.Q. 390 (Fed. Cir. 1983)). All relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar." *Recot, Inc. v. M.C. Becton*, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000).

Most important to this case, the Alcohol and Tobacco Tax and Trade Bureau requires that in order to use the term RANCH on a wine label 95% of the wine must have been produced from primary winemaking material grown on the named ranch. 27 C.F.R. § 4.39(m); *see also Hana Financial Group Inc.*, Serial No. 86019890. The reason for this rule is "to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product." Wine Labeling Amendments, 59 Fed. Reg. 14551-01, 1994 WL 97859 (March 29, 1994).

**a. Consumers will understand DANIKA RANCH to mean 95% of the grapes used in the wine originated from a physical place.**

This case is indistinguishable from the *Hutchinson and Stengl* and *Champagne Louis Roederer* cases. In the case of the CRYSTAL CREEK mark, the Board and the United States Court of Appeals for the Federal Circuit found that the ordinary definition of CREEK was sufficient to distinguish the identical terms CRYSTAL<sup>1</sup> used in connection with identical goods; namely, wine. *Champagne Louis Roederer, S.A. v. Delicato Vineyards*, 148 F.3d 1373 (Fed. Cir. 1998). The addition of CREEK transformed the meaning of CRYSTAL from the clarity of the wine to "a very clear (and hence probably remote from civilization) creek or stream." *Id.* The only difference

---

<sup>1</sup> CRISTAL is Spanish for CRYSTAL. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 11]

between the *Champagne Louis Roederer, S.A.* case and this case is that there are no legal requirements associated with the use of the term CREEK on a wine label unlike the legal requirements to use RANCH on a wine label.

The same transformation occurred between the CANNONBALL CREEK BREWING COMPANY GOLDEN, COLORADO & Design mark and CANNONBALL DOUBLE IPA mark. *In re Hutchinson and Stengl*, Serial No. 86809909 (T.T.A.B. August 9, 2019). There are no legal requirements associated with the use of the term CREEK on a beer label either, yet the Board, relying heavily on the Federal Circuit's decision in *Champagne Louis Roederer*, again found that the ordinary definition of CREEK was sufficient to distinguish the identical terms CANNONBALL used in connection with identical goods; namely, beer. The Board found "[t]he circumstances of [the CANNONBALL CREEK] case [were] *very similar, if not identical*, to those in *Champagne Louis Roederer, S.A. v. Delicato Vineyards . . .*," and held "[p]ut quite simply, we find that the presence of the word CREEK in Applicant's mark, like the presence of CREEK in the applicant's mark in *Champagne Louis Roederer*, causes the mark to be dissimilar from the cited mark in meaning and overall commercial impression." *Id* (emphasis added).

If the ordinary definition of a word is sufficient to change the meaning and overall commercial impression of the word it modifies, then the presence of the word RANCH, which has legal significance, also changes the meaning and overall commercial impression of the word it modifies, in this case DANIKA. When the average purchaser of wine encounters the DANIKA RANCH mark, the Cited Mark will convey that Stag's Leap's chardonnay wine is produced using 95% of the wine making material from the Danika Ranch, which is the name of a physical ranch in Napa Valley, CA. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 32]; *see also* 27 C.F.R. § 4.39(m).

In an attempt to distinguish the *Champagne Louis Roederer* case, the Examining Attorney improperly dissected the Cited Mark and then compared the meanings, in her opinion that is not supported by the evidence, conveyed by the individual terms DANICA and DANIKA. [Aug. 24, 2020, Office Action, TSDR p. 1] The United States Court of Appeals for the Federal Circuit compared CRISTAL and CRYSTAL CREEK when it concluded that these marks evoked different meanings in the minds of consumers not CRISTAL and CRYSTAL. *Champagne Louis Roederer, S.A.*, 148 F.3d 1373. Moreover, the evidence shows that the terms DANICA and DANIKA do not convey the same meaning when used in connection with alcoholic beverages in the first place. Nevertheless, completely ignoring the impact the term RANCH has on the meaning of the DANIKA term is in square opposition to the Federal Circuit's holding in *Champagne Louis Roederer, S.A.*

The Examining Attorney did not attempt to distinguish the *Hutchinson and Stengl* case from the present case. [Aug. 24, 2020, Office Action, TSDR p. 1] Other than the incorrect interpretation of the *Champagne Louis Roederer, S.A.* case, the Examining Attorney offered no credible argument or evidence that distinguishes this case from the *Hutchinson and Stengl* and *Champagne Louis Roederer* cases. Nothing meaningful was offered because this case is indistinguishable from the *Hutchinson and Stengl* and *Champagne Louis Roederer* cases and the outcome should be treated the same; namely, DANIKA RANCH and DANICA are sufficiently different in meaning and overall commercial impression.

**b. DANIKA is not the dominant term in the Cited Mark.**

The Examining Attorney argued that the dominant portion of the Cited Mark is DANIKA because Stag's Leap voluntarily disclaimed the term RANCH. [Aug. 24, 2020, Office Action, TSDR p. 1] Under the circumstances of this case, the Examining Attorney's conclusion is

inaccurate and not supported by the evidence. It is well settled that the disclaimed material still forms a part of the mark and cannot be ignored in determining likelihood of confusion. *In re Vittera Inc.*, 101 U.S.P.Q.2d 1905 (Fed. Cir. 2012) (citing *Giant Food, Inc. v. Nation's Foodservice, Inc.*, 218 U.S.P.Q. 390 (Fed. Cir. 1983)). All relevant facts pertaining to appearance, sound, and connotation must be considered before similarity as to one or more of those factors may be sufficient to support a finding that the marks are similar or dissimilar." *Recot, Inc. v. M.C. Becton*, 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000).

It is undisputed that the term RANCH conveys special meaning and is very important when it is used on a wine label. *See* 27 C.F.R. § 4.39(m). It is not the weak term the Examining Attorney argues it is. [Aug. 24, 2020, Office Action, TSDR p. 1] The average consumer of wine relies on the RANCH term to avoid being deceived. Wine Labeling Amendments, 59 Fed. Reg. 14551-01, 1994 WL 97859. Therefore, the average consumer will not ignore the term RANCH in favor of DANIKA, as the Examining Attorney speculates. [Aug. 24, 2020, Office Action, TSDR p. 1]; *see also id.*

Moreover, the term RANCH conveys important information about the wine not only to the average wine consumer but also to whomever is taking the average wine consumer's order. Consequently, the average wine consumer will not abbreviate the DANIKA RANCH mark to just DANIKA when ordering at a restaurant or bar for no other reason than to ensure the consumer receives the right wine. In fact, none of the consumers that have commented on the Stag's Leap Danika Ranch Chardonnay have referred to the wine as DANIKA, and the Examining Attorney has offered no evidence that consumers have or are likely to abbreviate the DANIKA RANCH mark. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 34] Therefore, the term DANIKA does not dominate the term RANCH despite the self-serving, voluntary disclaimer



made by Stag's Leap and it was an error for the Examining Attorney to place more weight on the DANIKA term when evaluating the similarity of the marks.

**c. The evidence shows that the Average Consumer of Wine will not understand DANIKA to mean a given name**

“The meaning or connotation of a mark must be determined in relation to the named goods or services.” TMEP § 1207.01(b)(v)(emphasis added). The Trademark Act requires the written consent from living individuals to register their name as a trademark or service mark. 15 U.S.C. § 1052(c); TMEP § 813. In those cases where the mark does not identify a living individual, it is the USPTO's practice to require a statement from the applicant that the name does not identify a living individual. *Christopher Brooks v. Creative Arts By Calloway, LLC*, 93 U.S.P.Q.2d 1823, \*8 (TTAB 2009).

Stag's Leap did not submit the written consent of a living individual named DANIKA when it applied to register the Cited Mark. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR pp. 20-27] Nor did Stag's Leap state that DANIKA was a personal name that did not identify a living individual. *Id.* Therefore, the voluntary disclaimer of RANCH is not the only statement Stag's Leap made about its DANIKA RANCH mark. Stag's Leap also made the statement that DANIKA does not convey the meaning of a given name when used in connection with “alcoholic beverages, excluding beer,” which is the goods description identified by the Cited Mark.

None of the Examining Attorney's evidence, which consisted of four women named Danika, has any connection to “alcoholic beverages, excluding beer”. [March 10, 2021, Reconsideration Letter, TSDR pp. 19-28] Likewise, the baby name websites offered by the Examining Attorney have no connection to “alcoholic beverages, except beer.” [*Id.*, at pp. 2-18] This evidence does not and cannot outweigh Stag's Leap's voluntary statement about its own

mark; namely, that the average consumer will not understand the meaning or connotation of DANIKA in connection with “alcoholic beverages, excluding beer” to be a personal name. TMEP § 1207.01(b)(v).

In fact, for actual evidence concerning whether consumers will perceive DANIKA as a given name we do not need to look further than the USPTO. Three different examining attorneys encountered marks containing the DANIKA term: DANIKA RANCH; DANIKA FARMS & Design, Serial No. 88422373; and DANIKA (in standard characters), Serial No. 79283795. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 29] None of these examining attorneys required the consent of a living individual or a statement that DANIKA does not identify the name of a living individual. *Id.* If DANIKA was widely recognized as a given name as the Examining Attorney suggests her evidence demonstrates, which it does not, then the three examining attorneys that encountered the DANIKA term would have required the consent of a living individual or representation that the name does not identify a living individual. *See* TMEP § 813; *Christopher Brooks*, 93 U.S.P.Q.2d at \*8. This evidence confirms the voluntary statement made by Stag’s Leap that the average consumer will not understand the meaning or connotation of DANIKA in connection with “alcoholic beverages, excluding beer” to be a personal name. Rather, the average consumer will understand the DANIKA RANCH mark to mean that Stag’s Leap’s chardonnay wine is produced using 95% of the wine making material from the Danika Ranch in Napa Valley, CA, and will understand Applicant’s DANICA mark to mean a personal name. [Aug. 3, 2020, Response to Office Action, TSDR pp. 8-12]

## **II. The DANIKA RANCH and DANICA marks travel in different channels of trade**

“If [a] registration or [an application] describes goods or services [with] no limitation as to their . . . channels of trade . . . , it is presumed that the . . . goods or services . . . move in all normal

channels of trade . . . .” TBMP 1207.01(a)(iii) (emphasis added). This does not entitle the registrant to a presumption that its goods travel in all possible trade channels. *In re Minibar North America, Inc.*, 2019 WL 5595056 (T.T.A.B. Oct. 15, 2019). The normal channels of trade for alcoholic beverages are liquor stores, restaurants, and bars. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR pp. 43-63, 75-100]

However, the Board has held there is no “under the same roof” rule that all products with similar marks sold in one store will cause confusion. *See In re Pearl River Chinese Products Emporium, Inc.*, 2005 WL 1350774, \*2 (T.T.A.B. May 26, 2005). “The mere existence of such an environment should not foreclose further inquiry into the likelihood of confusion arising from the use of similar marks on any goods so displayed.” *Id* (quoting *Federated Foods, Inc. v. Fort Howard Paper Company*, 192 U.S.P.Q. 24 (C.C.P.A. 1976)). In this case, it is an error to stop the likelihood of confusion analysis at the liquor store, restaurant, or bar entrance.

The evidence clearly demonstrates that the DANIKA RANCH chardonnay is not sold in liquor stores or restaurants. [August 3, 2020, Response to Office Action, TSDR p. 20-27] It is sold in limited quantities and only at Stag’s Leap’s winery in Napa Valley, CA. [*Id.*] Nevertheless, even if the DANIKA RANCH chardonnay was sold in liquor stores, restaurants, or bars it would be sold in a completely different section than Applicant’s rosé wine.

Physical liquor stores and their websites are organized by the style of wine. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR pp. 43-66, 75-76] The same is true in restaurants. Wine lists are organized first by wine style: namely, red wine, white wine, rosé wine, and sparkling, and then by grape varietal or region; namely, Cabernet, Pinot Noir, Merlot, Bordeaux, Pinot Gris, Chardonnay, etc. [*Id.*, at pp. 77-100] Therefore, Applicant’s DANICA rosé wine and the DANIKA RANCH chardonnay wine will never appear on the same shelf or in the

same section of a restaurant menu. Therefore, the normal channels of trade for Stag's Leap's goods and Applicant's goods are different.

The Examining Attorney will argue that the goods description in the Cited Mark is not limited to chardonnay wine and therefore the Cited Mark could be used on rosé wine. While this is the applicable presumption, the presumption is predicated on the possibility of a mark being used on a variety of goods because of an unrestricted goods description. *See Cosmetic Warriors Limited v. Trang Diem Tran*, 2017 WL 2876828, \*7 (T.T.A.B. June 2, 2017) (holding the goods identified in the application and registrations "could change at any time"). However, in this case, when it comes to wine, the goods cannot change at any time.

It is impossible for Stag's Leap to offer anything other than a chardonnay wine because of the Alcohol and Tobacco Tax and Trade Bureau's rules. *See* 27 C.F.R. § 4.39(m); *see also Hana Financial Group Inc.*, Serial No. 86019890. The Danika Ranch produces only chardonnay and sauvignon blanc grapes. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 32] Chardonnay grapes are not used to produce rosé wine. Wikipedia, <https://en.wikipedia.org/wiki/Ros%C3%A9> (June 3, 2021). When the law requires that 95% of the grapes used to produce a wine must come from the Danika Ranch and the Danika Ranch produces only chardonnay and sauvignon blanc grapes, there is no ability to produce a different style of wine, including, but not limited to, rosé wine. [Feb. 17, 2021, TEAS Request for Reconsideration after FOA, TSDR p. 32]; *see also* 27 C.F.R. § 4.39(m). Therefore, the wine offered by Stag's Leap cannot change at any time and the DANIKA RANCH mark will only be used with a chardonnay wine.

As far as any alcoholic beverages other than wine are concerned, the presumptions pertaining to channels of trade and class of consumers apply only when the goods are identical or

legally identical. *In re Minibar North America, Inc.*, 2019 WL 5595056 , at \*9. “[T]here is no per se rule that different types of alcoholic beverages are related . . . .” *E.g., Campari Mexico, S.A. de C.V. v. Grant Toland, Alexander Prenta and Russ Bennett*, Opposition No. 91250805 (T.T.A.B. Aug. 31, 2020). The examining attorney must provide evidence showing that the goods and services are related to support a finding of likelihood of confusion. *See, e.g., In re White Rock Distilleries Inc.*, 92 U.S.P.Q.2d 1282, 1285 (T.T.A.B. 2009) (finding the Office had failed to establish that wine and vodka infused with caffeine are related goods because there was no evidence that vodka and wine emanate from a single source under a single mark or that such goods are complementary products that would be bought and used together). All evidence that the examining attorney relies on in making a requirement or refusal must be placed in the record and copies must be sent to the applicant.” TMEP § 710.01 (emphasis added).

“Alcoholic beverage” is defined as any fermented liquor such as whiskey, gin, vodka, rum, brandy, and liqueurs or cordials. Britannica, <https://www.britannica.com/topic/alcoholic-beverage> (June 4, 2021). The Examining Attorney presented no evidence showing the relatedness of whiskey, gin, vodka, rum, brandy, and liqueurs or cordials or any other fermented liquor to wine. *See, e.g., White Rock Distilleries Inc.*, 92 U.S.P.Q.2d at 1285. Therefore, the likelihood of confusion refusal cannot be based on any alcoholic beverage other than wine, and the presumption that Stag’s Leap and Applicant’s channels of trade and class of consumer overlap can only apply to wine. Because Stag’s Leap is incapable of producing the necessary amount of wine making material from the Danika Ranch to produce a rosé wine, Applicant’s normal channels of trade are different than Stag’s Leap’s normal channels of trade for its chardonnay wine.

## CONCLUSION

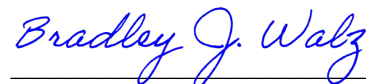
The presence of RANCH in the Cited Mark causes it to be dissimilar from Applicant's mark in meaning and overall commercial impression. The evidence shows that DANIKA does not convey the meaning of a personal name when used in connection with "alcoholic beverages, excluding beer," and the average consumer will understand DANIKA RANCH to mean that 95% of the grapes used to produce the chardonnay wine came from the Danika Ranch in Napa Valley, CA.

Additionally, the presumption that Applicant's wine and Stag's Leap's wine travel in the same normal channels of trade does not apply. The presumption is predicated on the possibility of Stag's Leap expanding beyond the chardonnay wine it currently offers under the DANIKA RANCH mark. But because of the Alcohol and Tobacco Tax and Trade Bureau's rules and because the Danika Ranch produces only chardonnay and sauvignon blanc grapes, which are not used to make rose wine, it is impossible for Stag's Leap to expand the use of the DANIKA RANCH mark beyond chardonnay wine. And the normal channels of trade for chardonnay wine and rosé wine are different.

There is no likelihood of confusion between the Cited Mark and Applicant's Mark. Therefore, Applicant respectfully requests that the Board reverse the registration refusal.

Respectfully submitted,

BARNES & THORNBURG, LLP



---

Bradley J. Walz  
2800 Capella Tower  
225 South Sixth Street  
Minneapolis, MN 55402

Direct: (612) 367-8756  
Email: [bwalz@btlaw.com](mailto:bwalz@btlaw.com)

*Attorneys for Applicant  
Danica Patrick Brands, LLC*

Dated: June 7, 2021

## TABLE OF AUTHORITIES

### CASES

|   |          |
|---|----------|
| <i>Campari Mexico, S.A. de C.V. v. Grant Toland, Alexander Prenta and Russ Bennett</i> , Opposition No. 91250805 (T.T.A.B. Aug. 31, 2020) ----- | 13       |
| <i>Champagne Louis Roederer, S.A. v. Delicato Vineyards</i> , 148 F.3d 1373 (Fed. Cir. 1998) -----  | 5, 7     |
| <i>Christopher Brooks v. Creative Arts By Calloway, LLC</i> , 93 U.S.P.Q.2d 1823, *8 (TTAB 2009) -----  | 9, 10    |
| <i>Cosmetic Warriors Limited v. Trang Diem Tran</i> , 2017 WL 2876828, *7 (T.T.A.B. June 2, 2017) -----   | 12       |
| <i>In re Budge Mfg. Co.</i> , 8 U.S.P.Q.2d 1259 (Fed. Cir. 1988) -----  | 2        |
| <i>In re Coors Brewing Co.</i> , 68 U.S.P.Q.2d 1059 (Fed. Cir. 2003) -----  | 4        |
| <i>In re Dixie Rests., Inc.</i> , 105 F.3d 1405, 1406 (Fed. Cir. 1997) -----  | 3        |
| <i>In re Guild Mortgage Company</i> , 912 F.3d 1376, 1379 (Fed. Cir. 2019) -----  | 3        |
| <i>In re Hana Financial Group Inc.</i> , Serial No. 86019890 (T.T.A.B. June 2, 2021) -----  | 3, 5, 13 |
| <i>In re Hutchinson and Stengl</i> , Serial No. 86809909 (T.T.A.B. August 9, 2019) -----  | 5, 7     |
| <i>In re Minibar North America, Inc.</i> , 2019 WL 5595056 (T.T.A.B. Oct. 15, 2019) -----   | 11, 13   |
| <i>In re Pearl River Chinese Products Emporium, Inc.</i> , 2005 WL 1350774, *2 (T.T.A.B. May 26, 2005) -----                                    | 11       |
| <i>In re Synthon Holding B.V.</i> , 2019 WL 1092591, *4 (T.T.A.B. Feb. 14, 2019) -----  | 3        |
| <i>In re Viterro Inc.</i> , 101 U.S.P.Q.2d 1905 (Fed. Cir. 2012) -----  | 3, 5, 8  |
| <i>In re White Rock Distilleries Inc.</i> , 92 U.S.P.Q.2d 1282, 1285 (T.T.A.B. 2009) -----  | 14       |
| <i>Keebler Co. v. Murray Bakery Prods., Inc.</i> , 9 U.S.P.Q.2d 1736 (Fed. Cir. 1989) -----   | 4        |
| <i>Kellogg Co. v. Pack'em Enters., Inc.</i> , 21 U.S.P.Q.2d 1142 -----  | 4        |
| <i>Paramount Int'l Export, Ltd. v. Q'SAI Co. Ltd.</i> , 2017 WL 4155295, *7 (T.T.A.B. Sept. 15, 2017) -----                                     | 4        |
| <i>Recot, Inc. v. M.C. Becton</i> , 54 U.S.P.Q.2d 1894, 1899 (Fed. Cir. 2000) -----   | 5, 8     |
| <i>Stone Lion Capital Partners v. Lion Capital</i> , 110 U.S.P.Q.2d 1157 (Fed. Cir. 2014) -----   | 4        |

### STATUTES

|                           |   |
|---------------------------|---|
| 15 U.S.C. § 1052(c) ----- | 9 |
|---------------------------|---|

### RULES

|   |                     |
|---|---------------------|
| 27 C.F.R. § 4.39(m) -----   | passim, 5, 7, 8, 13 |
| TBMP 1207.01(a)(iii) -----  | 11                  |
| TMEP § 1207.01(b)(v) -----  | 9, 10               |
| TMEP § 710.01 -----   | 2, 12, 14           |
| TMEP § 813 -----  | 10                  |
| Wine Labeling Amendments, 59 Fed. Reg. 14551-01, 1994 WL 97859 (March 29, 1994) ----- | 5, 7                |